THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

———————

THOMAS BOLLER, JEAN-MARC NEUHAUS
and JOHN RYALS
Junior Party[1]

v.

BERNARDUS J.C. CORNELISSEN
and LEO S. MELCHERS

Senior Party[2]

———————

Interference Patent No. 103,724

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[1] Application Serial No. 08/329,799, filed October 26, 1994. Assignee to Ciba-Geigy Corporation. Accorded benefit of Serial No. 07/715,521, filed June 14, 1991 and Switzerland Application 2007/90-9, filed June 15, 1990.

[2] Application Serial No. 08/229,050, filed April 18, 1994. Assignee to Rijksuniversiteit TE Leiden Morgen International, N.V. Accorded benefit of Serial No. 07/647,831, filed January 29, 1991 and the Netherlands 9000222, filed January 30, 1990.

Interference No. 103,724

Before DOWNEY, METZ and ELLIS, Administrative Patent Judges.

DOWNEY, Administrative Patent Judge.

JUDGMENT PURSUANT TO 37 C.F.R. § 1.662(a)

Cornelissen et al, the senior party, have filed, pursuant to 37 C.F.R. § 1.662(a), a concession of priority with respect to the invention defined by count 2 (Paper No. 79), which concession is treated as a request for entry of an adverse judgment as to all the claims which correspond to count 2.

Accordingly, JUDGMENT as to the subject matter of the count 2 is hereby awarded to Thomas Boller, Jean-Marc Neuhaus and John Ryals, the junior party and against Bernardus J.C. Cornelissen and Leo S. Melchers, the senior party. On this record, Boller et al. are entitled to a patent containing claims 63, 71, 74-75 corresponding to count 2 and Cornelissen et al. are not entitled to a patent containing claims 14, 25, 31, 35 and 41-54 corresponding to count 2.

In the Initial Interference Memorandum, the primary examiner indicated that claims 37 and 38 were not allowable to Boller et al. The question of patentability of these claims was not raised in this proceeding, accordingly, we take no position on Boller's entitlement to claims 37-38. Grove v. Johnson, 22 USPQ2d 1044, 1050 (Bd. Pat. App. & Int. 1991). In addition, we take no position with respect to Boller's entitlement to claims 76-87, claims

added to the Boller application to correspond to the count. Maier v. Hanawa, 26 USPQ2d 1606, 1609 (Comm'r. 1992) [The "same patentable invention" requirement of 37 C.F.R. § 1.637(c)(3)(ii) concerns only the relationship between the Count and the claims sought to be additionally designated. It does not concern general patentability over the prior art]. Claims 76-87, additionally designated, have not been examined. Accordingly, we take no position on Boller's entitlement to claims 76-87 and also refer the matter to the Primary Examiner for appropriate action.

Boller et al., the junior party, have filed, pursuant to 37 CFR § 1.662(a), a concession of priority with respect to the invention defined by count 3 (Paper No. 86), which concession is treated as a request for entry of an adverse judgment as to all the claims which correspond to count 3 in this interference.

Accordingly, JUDGMENT as to the subject matter of the count 3 is hereby awarded to Bernardus J.C. Cornelissen and Leo S. Melchers, the senior party and against Thomas Boller, Jean-Marc Neuhaus and John Ryals, the junior party. On this record, Cornelissen et al. are entitled to a patent containing claims 88-89 corresponding to count 3 and Boller et al. are not entitled to claims 55-61 corresponding to count 3.

In the initial Interference Memorandum, the primary examiner indicated that claim 39 was not examined. Accordingly, we take no position on Cornelissen et al.

entitlement to this claim and refer the matter to the primary examiner for appropriate action. Grove, supra.

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MARY F. DOWNEY		)
Administrative Patent Judge		)
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		)
		) BOARD OF PATENT
ANDREW H. METZ	)	
Administrative Patent Judge		) APPEALS AND
		)
		) INTERFERENCES
		)
JOAN ELLIS	)	
Administrative Patent Judge		)

MFD/caw

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